

JUL 13 1978

1 KIRSCH ARAK AND BULMASH
2 280 So. Beverly Drive
3 Suite 300
Beverly Hills, CA 90212
(213) 278-9250

F I L E D
Robert A. Zimmerman, Clerk

JUL 12 1978

A. ZOM, Deputy.

5 Attorneys for Defendant
6 CIRCLE INTERNATIONAL CO.

CHANGE OF VENUE

LAW OFFICES
KIRSCH, ARAK AND BULMASH
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BEVERLY HILLS, CALIFORNIA 90212
TELEPHONE (213) 278-9250

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

11 GREMLIN INDUSTRIES,) CASE NO. 416704
12 a Delaware corporation,)
13 Plaintiff,) NOTICE OF MOTION AND MOTION
14 vs.) FOR CHANGE OF VENUE; FOR COSTS
15 CIRCLE INTERNATIONAL CO.,) AND ATTORNEYS' FEES; POINTS
16 INC., etc. et al.,) AND AUTHORITIES IN SUPPORT
17 Defendants.) THEREOF; AFFIDAVIT OF MERITS
18) IN SUPPORT THEREOF; DECLARATIONS
19 TO: Plaintiff, GREMLIN INDUSTRIES, INC., and to its)
20 attorney of record, Ernest Borunda, Esq.:)
21 PLEASE TAKE NOTICE that on August 24, 1978, at 1:30 P.M.
22 or as soon thereafter as the matter may be heard in Dept. 4
23 of the above-entitled Court, located at 220 W. Broadway, San
24 Diego, California, Defendant CIRCLE INTERNATIONAL CO., will
25 move the Court for an Order Changing Venue for the trial of
26 this action to the Los Angeles Superior Court, Central District,
27 located at 111 North Hill Street, Los Angeles, California.
28 This Motion will be made on the grounds that the Court

Date: August 24, 1978
Time: 1:30 P.M.
Place: Department 4

1 designated on the Complaint on file herein is not the proper
2 Court for the trial of this action, thus requiring that the
3 matter be transferred to the Los Angeles County Superior Court,
4 Central District.

5 This Motion will be based on this Notice of Motion,
6 the Memorandum of Points and Authorities filed herewith, the
7 Affidavit of Merits filed in support hereof, the Declarations
8 filed in support hereof, and such further documentary and/or
9 oral evidence as the Court may receive at the time of hearing
10 on this Motion.

11 Defendant CIRCLE INTERNATIONAL CO. will also move
12 the Court for an Order for costs and attorneys' fees incurred in
13 making this Motion, pursuant to the provisions of California Code
14 of Civil Procedure Section 396(b).

15 Dated: June 28, 1978

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BEVERLY HILLS, CALIFORNIA 90210
Telephone (213) 876-8180

16 By: *Richard J. Greene*
17 RICHARD J. GREENE, Attorneys
18 for Defendant CIRCLE INTERNATIONAL

AFFIDAVIT OF MERITS

I, DEAN McMURDIE, declare and state:

1. That I am the President of Circle International Co., the Defendant in the above-entitled and numbered action. That as to the following facts I know them to be true of my own personal knowledge and if called and sworn as a witness in this matter, I could and would competently testify thereto.

2. That I have fully and thoroughly stated the case regarding this action and all facts and circumstances connected to it to my counsel, Kirsch Arak and Bulmash who are licensed and practicing attorneys, admitted to practice before all of the Courts of the State of California; and after such statement I am advised by such counsel, and truly believe, that I have a good and valid defense on the merits to the allegations set forth in the Complaint on file herein.

Executed this 29th day of June, 1978 at Beverly Hills, California.

I declare under penalty of perjury that the foregoing
is true and correct.

DEAN McMURDIE, Declarant

1 POINTS AND AUTHORITIES

2
3 Defendant, CIRCLE INTERNATIONAL COMPANY, submits the
4 following Points and Authorities in Support of its Motion:

- 5 1. THE CONTROVERSY HEREIN CENTERS AROUND
6 AN ORAL CONTRACT FOR THE PURCHASE AND
7 SALE OF GOODS AND AS SUCH, THE PROPER
8 VENUE IS IN THE COUNTY WHERE THE LAST
9 ACT NECESSARY TO EFFECTUATE THE CONTRACT
10 TOOK PLACE.

11 Bank of Yolo vs. Sperry Flower Co. 141 Cal. 314
12 (1903);

13 Pacific Airlines vs. Superior Court, 231 Cal. App.
14 2d 587, (1965);
15 Witkin, California Procedure, Section Edition,
16 Actions Section 478.

17
18 Although Plaintiff has employed the tactic of pleading
19 its Complaint in common counts, which provides the Court with
20 the least possible information regarding the circumstances
21 surrounding the controversy between the parties, it becomes
22 apparent that one party cannot become obligated to another
23 upon an open book account, account stated, or any other theory,
24 unless some type of agreement is the underlying transaction.
25 The agreement in the case at bar is an oral contract for the
26 purchase and sale of goods.

27 The Complaint, at Paragraph 3 thereof, alleges only
28 that the obligation was payable in San Diego. However, not only

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1 is this less than dispositive as to where payment is made, it
2 fails to take into account that the underlying transaction being
3 an oral contract for the purchase of goods, venue would be proper
4 at the place where the last act necessary for the effectiveness
5 of the contract took place. As appears with more particularity
6 in the Declaration of Dean McMurdie filed in support of this
7 Motion, the vast majority of goods shipped by GREMLIN to CIRCLE
8 were shipped freight collect, to be accepted and with freight
9 charges paid in Los Angeles County, California.

10 In discussing and deciding that the Court must inquire
11 into the nature of the action, the Pacific Airlines Court, at
12 page 590 of its opinion held:

13 "The true rule is that in venue
14 matters, we look to the Complaint
15 to determine the nature of the
16 action..."

17 Here, however, Plaintiff has employed the method of
18 pleading which gives the Court the lease information. However,
19 as Plaintiff well knows, the vast majority of the goods shipped
20 to CIRCLE required acceptance by CIRCLE paying the freight
21 charges in Los Angeles County, California, thus finalizing the
22 acceptance of delivery of the goods and thus being the last act
23 necessary to effectuate the oral agreement to purchase.

24 While Plaintiff may argue that California Civil Code
25 Section 1489 takes cognizance that an offer of performance may be
26 made to the creditor where he resides, said Section provides
27 that this is done at the option of the debtor. There is no
28 allegation in the Complaint supportive of such theory.

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1 Professor Witkin, *supra*, at page 1302 of this Procedure
2 Treatise, further verifies that the Court must seek the intention
3 of the parties in the circumstances.

4 As the Declaration of Dean McMurdie filed in support
5 of this Motion will show, the intentions of the parties was that
6 the goods be accepted and freight charges paid in Los Angeles
7 County, thus finalizing and effectuating the contract at that
8 location. In fact, Plaintiff's own invoices are illustrative
9 of the fact that the vast majority of shipments were freight
10 collect.

11
12 LAW OFFICES
13 KIRSCH, ARAK AND BULMASH
14 180 SOUTH BEVERLY DRIVE, SUITE 200
15 BEVERLY HILLS, CALIFORNIA 90210
16 TELEPHONE (213) 529-8800

17 2. ON A MOTION FOR CHANGE OF VENUE BY
A CORPORATE DEFENDANT SUED IN A
COUNTY OTHER THAN WHERE ITS PRINCIPAL
PLACE OF BUSINESS IS LOCATED, THE
BURDEN IS ON PLAINTIFF TO ESTABLISH
THE PROPRIETY OF VENUE IN THE COURT
WHERE THE SUIT WAS FILED.

18
19 Meyer vs. Burdett Oxygen Co., 170 Cal. App. 2d
20 519 (1959).

21
22 While Plaintiff may argue that the rules for venue as
23 concerns corporate defendants are more broad than those pertaining
24 to an individual defendant, the law specifically provides that
25 such theory is tempered by a shifting of the burden to Plaintiff
26 to establish the propriety of venue. Or, to put it as the Meyer
27 Court did, at page 523 of its opinion:
28 //

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1 "The general rule is that where an
2 action is brought against a corp-
3 oration in a county other than where
4 its principal place of business is
5 located, the burden is on the plaintiff,
6 on an application for change of venue,
7 to show that the contract was made, or
8 was to be performed, or that the
9 obligation arose, or that the breach
10 occurred in the County where the suit
11 was brought. (Hammond vs. Ocean Shore
12 Development Co. 22, Cal. App. 167...)"
13 [Emphasis added]

14 Here, Plaintiff has used the barest venue allegation
15 possible and provided the Court with the least amount of
16 information concerning the facts of the underlying transaction
17 between the parties. It is therefore submitted that Plaintiff
18 has totally failed to establish venue in San Diego County.
19

20 3. COSTS OF MAKING A MOTION FOR CHANGE OF
21 VENUE AND ATTORNEYS FEES' INCURRED ARE
22 RECOVERABLE AND SHOULD BE AWARDED TO
23 DEFENDANT.

24 California Code of Civil Procedure, Section 396(b)

25
26 The above-cited statute provides in pertinent part:
27 "...the court may order the payment
28 to the prevailing party of reasonable

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expenses and attorneys' fees incurred
in making or resisting such motion
whether or not such party is otherwise
entitled to recover its costs of
action. In determining whether such
order for expenses or fees shall be
made, the court shall take into consider-
ation (1) whether an offer to stipulate
to change of venue was reasonably made
and rejected, and (2) whether such motion
or selection of venue was made in good
faith given the facts and law the
party making the Motion or selecting
the venue knew, or should have known."

As will appear with more particularity in the Declaration
of Richard J. Greene filed in support hereof, an offer for
stipulated change of venue was made, but rejected by Plaintiff's
counsel. It is therefore submitted that the costs and attorneys'
fees incurred by Defendant in making this Motion should be
awarded by the Court.

CONCLUSION

Pursuant to the foregoing, it is submitted that
Plaintiff, in framing its Complaint, has omitted to inform the
Court of the facts of the underlying transaction, and specifically
facts indicative that the last act necessary to effectuate an
finalize its contract for sale and purchase of goods with

1 CIRCLE INTERNATIONAL COMPANY took place in Los Angeles County,
2 California. Specifically, Plaintiff has failed to set forth
3 the freight collect shipping terms and/or the fact that numerous
4 invoices for goods were sent, along with the goods, cash on
5 delivery. Thus, it is submitted that Defendant's Motion to Change
6 Venue should be granted.

7 Dated: June 28, 1978

Respectfully submitted,

8 KIRSCH ARAK AND BULMASH

9
10 By: *Richard J. Greene*
11 RICHARD J. GREENE, Attorney
for Defendant CIRCLE
12 INTERNATIONAL COMPANY
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1 DECLARATION OF DEAN McMURDIE

2

3 I, DEAN McMURDIE, declare:

4 1. That I am the President of CIRCLE INTERNATIONAL
5 COMPANY, INC., a California corporation, and Defendant herein.
6 That as to the following facts, I know them to be true of my
7 own personal knowledge and if called and sworn as a witness
8 in this matter, I could and would competently testify thereto.

9 2. That as President of CIRCLE INTERNATIONAL COMPANY,
10 I am the person primarily in charge of all transactions with
11 GREMLIN INDUSTRIES and have had dealings with GREMLIN INDUSTRIES,
12 for in excess of five years. In fact, I was instrumental in the
13 creation of GREMLIN INDUSTRIES from its inception and provided
14 said entity with the funds with which to build their first line
15 of products.

16 3. That at no time whatsoever, has CIRCLE INTERNATIONAL
17 COMPANY ever agreed to an account stated with GREMLIN INDUSTRIES
18 in the amount of \$89,640.70, or in any other amount whatsoever.

19 4. In fact, there has been a continuing dispute
20 between CIRCLE INTERNATIONAL and GREMLIN INDUSTRIES regarding
21 what amount, if any at all, is payable from CIRCLE INTERNATIONAL
22 to GREMLIN INDUSTRIES. The reason for this is simply that a
23 large majority of the goods shipped to CIRCLE INTERNATIONAL
24 by GREMLIN INDUSTRIES were, and are, totally defective and unsuitable
25 for resale or any use whatsoever. In fact, GREMLIN INDUSTRIES
26 agreed to take back \$29,000.00 of goods which I personally
27 arranged to have shipped back to them. However, despite promising
28 to accept the returns, GREMLIN refused to accept delivery, thus

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1 causing substantial expense to be incurred by CIRCLE INTERNATIONAL.
2 The minimum amount of defective merchandise is \$29,000.00 and
3 GREMLIN INDUSTRIES was notified in each instance as defective
4 merchandise was discovered and promptly on discovery of same.

5. In addition, numerous orders from GREMLIN INDUSTRIES
6 were late, were invoiced as back orders without any prior notice
7 that the order couldn't be filled, and/or were defective as
8 described above. The result of all of this has been tremendous
9 damage to CIRCLE INTERNATIONAL COMPANY in the form of cancellation
10 of orders resulting in lost sales, loss of business due to
11 customers going elsewhere for the reason that their orders
12 were not filled on time, tremendous amounts of damages incurred
13 by having to have CIRCLE INTERNATIONAL service department
14 personnel work on the machines from GREMLIN in order to try and
15 make the machines suitable for resale, and a loss of reputation
16 and goodwill in the business community as a result of CIRCLE
17 INTERNATIONAL not being able to live up to its obligations for
18 delivery of merchandise all due to the failures of GREMLIN to
19 properly perform its obligations to CIRCLE INTERNATIONAL.

20. The result of the foregoing is that CIRCLE has
21 been damaged in an amount far in excess of the amount claimed
22 due from CIRCLE by GREMLIN. While the exact amount of CIRCLE
23 INTERNATIONAL's damages have not yet been ascertained, my years
24 of experience as the President and Chief Administrative Officer
25 of CIRCLE INTERNATIONAL COMPANY indicate to me that the loss of
26 business by virtue of lost customers and lost sales for order
27 cancellations, as well as the defective merchandise, which
28 GREMLIN has refused to make good on, will total far in excess of

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1 the amount sued for in the Complaint in this action.

2 7. Additionally, with regard to merchandise shipped
3 to CIRCLE INTERNATIONAL by GREMLIN INDUSTRIES, the vast majority
4 of said shipments were freight collect with the last act
5 necessary for acceptance of the goods to take place in Los
6 Angeles County, California, by CIRCLE INTERNATIONAL COMPANY
7 paying the freight collect charges, thus finalizing each
8 purchase transaction. Attached hereto collectively marked
9 Exhibit "1" and incorporated herein by this reference as
10 though set forth in full are true and correct copies of GREMLIN
11 invoices to CIRCLE INTERNATIONAL in excess of \$50,000.00, all
12 of which show on their face that the shipments were freight
13 collect. These invoices are furnished for illustration only
14 and do not reflect each and every transaction where GREMLIN
15 sent freight collect shipments to CIRCLE INTERNATIONAL to be
16 accepted as set forth hereinabove.

17 8. In addition, attached hereto marked collectively
18 as Exhibit "2", and incorporated herein by this reference as
19 though set forth in full are true and correct copies of numerous
20 invoices from GREMLIN to CIRCLE INTERNATIONAL which were C.O.D
21 (cash on delivery) with delivery and cash on delivery to take
22 place in Los Angeles County, California. These items are included
23 in the statement of account which Plaintiff has attached to its
24 Complaint. However, these transactions are a further illustration
25 of the fact that delivery and acceptance in Los Angeles County,
26 California was the circumstance contemplated to finalize and
27 effectuate each purchase transaction.

28 9. Furthermore, with regard to shipments received

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1 CIRCLE INTERNATIONAL COMPANY's receiving form specifically
2 provides:

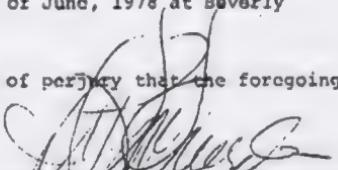
3 "All merchandise received subject to
4 deduction for broken or missing parts."

5 What this simply means is that no transaction was
6 to be finalized, nor the goods accepted until it was verified
7 that said items were in proper order. Attached hereto marked
8 Exhibit "3" is a true and correct copy of an exemplar of a
9 CIRCLE INTERNATIONAL COMPANY receiving document.

10. Additionally, at no time whatsoever did CIRCLE
11 INTERNATIONAL COMPANY, nor did I as President of CIRCLE INTERNATIONAL,
12 instruct GREMLIN INDUSTRIES as to the method by which goods were
13 to be shipped to CIRCLE and/or the name of or type of carrier
14 to be used.

15 Executed this 29th day of June, 1978 at Beverly
16 Hills, California.

17 I declare under penalty of perjury that the foregoing
18 is true and correct.

19 
20 DEAN/MOURDIE, Declarant

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TELEPHONE (213) 278-9200

ORIGINAL INVOICE

Gremlin

Gremlin Industries, Inc.
2401 Aero Drive, San Diego, California 92123
Telephone: (714) 277-8700

O TO

SHIP TO

A0508
 CIRCLE, INTERNATIONAL
 2225 N. PICO BLVD

ATTENTION LOS ANGELES,

CA 90006

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
27 JAN 78	27 JAN 78	TRUCK	VERBAL/D.M.	FACT	NET 30	1999981-1
PART NUMBER	ORD.	B.O.	SHIP.	DESCRIPTION	UNIT PRICE	AMOUNT
712-0001	10	'0	10	THIS IS A BACKORDER INVOICE GAME "TENPIN" SHIP COLLECT	1095.000	10950.00
				Serial Numbers: 6022 6023 6024 6025 6026 6027 6028 6029 6030 6031		10950.00
				(N) RI: 17132-1/31/78		

EXHIBIT "1" PAGE 1 OF 1

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

ORIGINAL INVOICE

GREMILN
Gremlin Industries, Inc.

B-101 Aero Drive, San Diego, California 92123
Telephone: (714) 377-8700

SHIP TO:

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES, CA 90006
ATTENTION:

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
02 FEB 78	01 FEB 78	TRUCK	SAMPLES	FACT	NET 30	20494
PART NUMBER	QUANTITY		DESCRIPTION	UNIT PRICE	AMOUNT	
	ORD.	B.O.				SHIP.
715-0001	2	0	SAFARI	1395.000	2790.00	
			SHIP COLLECT	TOTAL		2790.00
SN : 7020 7021	104-A	HERE	(N) RD17146- 2/3/78			

PLAQUE DAY TIME LAST
AUGUST 1979

ORIGINAL INVOICE

EXHIBIT

PAGE 2 OF 3



Gremlin Industries, Inc.

2401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

ORIGINAL INVOICE

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

SHIP TO

ATTENTION:
LOS ANGELES,

CA 90006

01

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	P.O.S.	TERMS	INVOICE NO.	
09 JAN 78	06 JAN 78	TRUCK	VERBAL/D.M.	FACT	NET 30	19999	
PART NUMBER	QUANTITY			DESCRIPTION		UNIT PRICE	AMOUNT
712-0001	25	15	10	GAME TENPIN		1095.000	10950.00
				SHIP COLLECT			10950.00
					TOTAL		
SN 5848 THRU 5856 5858				(N) RD 17010 - 7/9/78	104-A		

ORIGINAL INVOICE

PLEASE PAY THE LAST
ACCOUNT IN THIS COLUMN

ORIGINAL INVOICE

Gremfins

Gramlin Industries, Inc.

5001 Santa Barbara, East River, California 92323

Teléfono: (714) 377-3784

201 & 15

SKIP TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES 1- EA 99006

ATTENTION

USE AS ON IS GREATINGS !

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
PART NUMBER	QUANTITY		DESCRIPTION		UNIT PRICE	AMOUNT
ORD.	S.Q.	SHIP.				
			THIS IS A BACKORDER INVOICE			
782-0001	15	10	5. GANEI TENRIN		1095.000	115475.00
O/N 8912 thru 5916			SHIP COLLECT		TOTAL	115475.00
			(N) R# 17036 - 1/1/78		104-A	
					10/1/2018	
					RECEIVED	

PLEASE PAY THE LAST
AMOUNT IN THIS QUOTE

ORIGINAL INVOICE

ORIGINAL INVOICE

Gemline

Gremill Industries, Inc.

3491 Alvarado Parkway, San Diego, California 92123

Telephone: (713) 377-1179

SOLD TO

SHIP TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES,
ATTENTION:

CA 90006

93

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
PART NUMBER	QUANTITY		DESCRIPTION	UNIT PRICE	AMOUNT	
ORD.	B.O.	SHIP.				
714-0001	10	0	10 GAME-DYC SHIP COLLECT.	1195.000	11950.00	
				TOTAL		11950.00
			Serial Numbers: 6650 through 6659			
			(N) RD 16975 - 12/27/77			

Social Numbers: 6650 through 6659

through 6659
104-A

(N) RD 16975-12/27/77

九月廿四日 丁巳年 重陽節 七夕

ORIGINAL INVOICE

ORIGINAL INVOICE

Gremlin

Gremlin Industries, Inc.

8401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

SHIP TO

C.O.D. @ 150% OF PURCHASE

LOS ANGELES,

CA 90006

ATTENTION:

03

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
PART NUMBER	QUANTITY			DESCRIPTION	UNIT PRICE	AMOUNT
	ORD.	B.O.	SHIP.			
14 DEC 77	13 DEC 77	TRUCK		VERBAL/D.E.	FACT	NET 30
714-0001	6	0	6	GAME D/C	1195.00	7170.00
SHIP COLLECT						
S/N 6578 through 6583						
104-A						
(W) RD76953-17/27/77						

PLEASE FAX TWO LAST
ROWS IN THIS COLUMN

ORIGINAL INVOICE

EXHIBIT

PAGE 6 OF 9



ORIGINAL INVOICE

Gremlin Industries, Inc.

84-91 Acera Drive, San Bruno, California 94066

Telephone: (011) 277-1793

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD
LOS ANGELES,

ATTENTION:

1100 TO

CUSTOMER PICK UP
ROWE AUTOMATIC
11/15/77-RECEIVED BY
KEVIN DAVIS

01

የኢትዮጵያ የሰነድ ተወስኝ እና ስም
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ORIGINAL INVOICE

EXHIBIT 1 PAGE 7 OF 7



Gremlin Industries, Inc.

3401 Aero Drive, San Diego, California 92123

Telephone: (714) 277-8700

ORIGINAL INVOICE

SOLD TO

A0508
CIRCLE INTERNATIONAL
2225 W. PICO BLVD

LOS ANGELES,

CA 90006

SHIP TO

POMONA VALLEY GOLF
1500 W. 7TH STREET
UPLAND

CA 91786

ATTENTION:

SEASON'S GREETINGS!

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DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.	
PART NUMBER	QUANTITY			DESCRIPTION		UNIT PRICE	AMOUNT
	ORD.	S.O.	SHIP.				
14 DEC 77	13 DEC 77	TRUCK		VERBAL/DRM	FACT	NET 30	19727
714-0001	1	0	I	GAME O/C		1195.000	1195.00
				SHIP C.O.D. AT 150% OF AMT. OF PURCHASE			
					TOTAL		1195.00
				SIN 6563			
				(N) RD 16966 - 12/23/77			

PLEASE PAY THE LAST
THREE Digits in Two Columns

ORIGINAL INVOICE

ORIGINAL INVOICE

Gremlin Industries, Inc.
 2401 Aero Drive, San Diego, California 92123
 Telephone: (714) 277-8700

SOLD TO:

A0508
 CIRCLE INTERNATIONAL
 2225 W. PICO BLVD

SHIP TO:
 GARDEN HEIGHTS MINIATURE GOLF
 8900 FLETCHER PARKWAY

ATTENTION:
 LOS ANGELES,

CA 90006

LA MESA

CA 92041

SEASON'S GREETINGS!

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.
14 DEC 77	13 DEC 77	TRUCK	VERBAL/DRM	FACT	NET 30	10726
PART NUMBER	ORD.	QTY.	DESCRIPTION		UNIT PRICE	AMOUNT
714-0001	1	0	GAME D/C	A	1195.000	1195.00
			SHIP C.O.D. AT 150% OF AMT. OF PURCHASE			
				TOTAL		1195.00
			S/N 6564	104-A		
			(N) RD-16967-1/23/77			

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE



ORIGINAL INVOICE

Gremlin Industries, Inc.

EVONIK RESINS, INC.
2420 North River, San Bruno, California 94066

Teléfono: (710) 371-8789

30LR TA

A0508
CIRCLE INTERNATIONAL
2225 N. PICO BLVD

LOS ANGELES,

CA 90006

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S.D. MINIATURE GOLF
1805 CLAIREFONTAIN MESA BLVD.

SAN DIEGO

CA 8000

SEASON IS GR

ORIGINAL INVOICE

PLEASE PUT THE LAST
ACCOUNT IN THIS ENVELOPE

EXHIBIT 17 PAGE 2 OF 2

ORIGINAL INVOICE

Gremlin Industries, Inc.
 2401 Aero Drive, San Diego, California 92123
 Telephone: (714) 277-8700

SOLD TO

A0508
 CIRCLE INTERNATIONAL
 2225 W. PICO BLVD
 LOS ANGELES, CA 90006
 ATTENTION:

SHIP TO

FOUNTAIN VALLEY GOLF
 SD Fwy & MAGNOLIA AVENUE
 FOUNTAIN VALLEY, CA 92708
 SEASON'S GREETINGS!

03

DATE	DATE SHIPPED	SHIPPED VIA	YOUR ORDER NO.	F.O.B.	TERMS	INVOICE NO.	
18 DEC 77	13 DEC 77	TRUCK	VERBAL/ORM	FACT	NET 30	19729	
PART NUMBER	QUANTITY			DESCRIPTION		UNIT PRICE	AMOUNT
	ORD.	S.Q.	SHIP.				
714-0001	1	0	1	GAME-D/C 104-A		1195.000	1195.00
				SHIP COD AT 150% AMT. OF PURCHASE			
				TOTAL			1195.00
				S/N-6562			
				104-A			
				(N) RD16969-12/23/77			

PLEASE PAY THE LAST
AMOUNT IN THIS COLUMN

ORIGINAL INVOICE

RECEIVING DOCUMENT

CIRCLE INTERNATIONAL CO.

DATE 2-7-18

LA NO 17150

TS7823-5

Twin Lin Industries

San Leandro, Calif.

Postnet Tel

Serial Card

Master Card

Card Card

Cash
Credit

QUANTITY	MANUFACTURER	DESCRIPTION	SERIAL NUMBERS	AMOUNT
6 Ww	Franklin	Hustle	995+160	2222
			800+160	2226
			995+160	2452
			700+160	2771
			700+160	2774
			020+160	420
		(N) demovice 2	0766- 2/7/18	

FBI BUREAU NO FB 5C 9687

Freight or Calif Postage - \$121.25 Collect

ALL MERCHANDISE RECEIVED SUBJECT TO DEDUCTION FOR BROKEN OR MISSING PARTS.

RECEIVED BY

FILE COPY

EXHIBIT "3" PAGE 1 OF 1

DECLARATION OF RICHARD J. GREENE

I, RICHARD J. GREENE, declare:

1. That I am an attorney at law duly licensed to practice law before all of the Courts of the State of California, am an associate in the offices of Kirsch Arak and Bulmash and am one of the attorneys of record for CIRCLE INTERNATIONAL COMPANY, the Defendant herein.

2. That as to the following facts, I know them to be true of my own personal knowledge, and if called and sworn as a witness in this matter, could and would competently testify thereto.

3. That on or about June 1, 1978, I was consulted by Dean McMurdie, President of CIRCLE INTERNATIONAL COMPANY regarding the fact that he had been served with Complaint in the within action.

4. After discussing the facts of the case with Mr. McMurdie, I determined that venue should be in Los Angeles County, California and so informed Ernest Borunda, Esq., the attorney for Plaintiff. I did so on or about June 2, 1978 by sending Mr. Borunda a Stipulation to Change Venue. A true and correct copy is attached hereto marked Exhibit "1" and is incorporated herein by this reference as though set forth in full.

5. On or about June 14, 1978, I was informed by Mr. Borunda that the Stipulation was rejected and would not be signed by Plaintiff or Plaintiff's counsel.

I traveled to San Diego and took the Depositions of Frank Fogelman

1 President of GREMLIN; Gene Candelore, Vice-President and General
2 Manager of GREMLIN, Gerald Hansen, Senior Vice-President of GREMLIN;
3 and Ray Foster, Vice-President and Treasurer of GREMLIN. Each and
4 all of said individuals, during the testimony at their individual
5 Depositions admitted that freight collect shipments to CIRCLE
6 INTERNATIONAL resulted in freight charges being paid by CIRCLE
7 at the point of delivery in Los Angeles County, California, and
8 that with regard to cash on delivery shipments, both the freight
9 charges and the payment of the order took place at point of
10 delivery in Los Angeles County, California. Mr. Hansen and Mr.
11 Foster contended that insofar as GREMLIN was concerned, the goods
12 were the property of CIRCLE INTERNATIONAL in San Diego and that
13 CIRCLE INTERNATIONAL instructed GREMLIN as to the manner of
14 shipping, i.e., that the goods were shipped pursuant to CIRCLE's
15 shipping instructions. However, neither Mr. Hansen or Mr. Foster
16 could produce written shipping instructions from CIRCLE nor could
17 they indicate the manner by which CIRCLE INTERNATIONAL supposedly
18 gave verbal shipping instructions.

19 Executed this 27th day of June, 1978, at Beverly
20 Hills, California.

21 I declare under penalty of perjury that the foregoing
22 is true and correct.

23 *Richard J. Greene*
24 RICHARD J. GREENE, Declarant
25
26
27
28

LAW OFFICES
KIRSCH, ARAK AND BULMASH
880 South BEVERLY DRIVE, SUITE 300
BEVERLY HILLS, CALIFORNIA 90212
TELEPHONE (213) 278-9250

1 KIRSCH, ARAK AND BULMASH
2 880 So. Beverly Drive
3 Suite 300
4 Beverly Hills, CA 90212
5 (213) 278-9250

6
7
8 Attorneys for Defendant
9 CIRCLE INTERNATIONAL CO.

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO

13
14 GREMLIN INDUSTRIES, INC., a) CASE NO. 416704
15 Delaware corporation,)
16 Plaintiff,) STIPULATION FOR CHANGE OF VENUE;
17 vs.) AND ORDER THEREON
18 CIRCLE INTERNATIONAL, a)
19 California corporation, etc.)
20 et al.,)
21 Defendants.)
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IT IS HEREBY STIPULATED AND AGREED by and between
Plaintiff GREMLIN INDUSTRIES, INC., a Delaware corporation and
Defendant CIRCLE INTERNATIONAL CO., a California corporation
(erroneously sued herein as CIRCLE INTERNATIONAL, a California
corporation) by and through their respective attorneys of record
that the within action be transferred to the Superior Court
of the County of Los Angeles, Central District, 111 North
Hill Street, Los Angeles, California;

IT IS FURTHER STIPULATED AND AGREED that Plaintiff shall
bear all costs and fees for said transfer;

1 IT IS FURTHER STIPULATED AND AGREED that pending transfer
2 of the within action to the Los Angeles County Superior Court,
3 Defendant CIRCLE INTERNATIONAL CO., a California corporation shall
4 have an extension of time within which to file its responsive
5 pleading to the Complaint on file herein to and including 30
6 days after the Los Angeles Superior Court notifies all parties
7 as to assignment of a Los Angeles Superior Court case number.

8 Dated: June , 1978

9
10 ERNEST BORUNDA, ESQ. Attorney
for Plaintiff

11
12 Dated: June 7 , 1978

KIRSCH ARAK AND BULMASH

13 By: Richard J. Greene
14 RICHARD J. GREENE, Attorney
15 for Defendant CIRCLE
INTERNATIONAL CO.

16 O R D E R
17

18 Pursuant to the foregoing stipulation, and good
19 cause appearing therefor:

20 IT IS SO ORDERED.

21
22 Dated: June , 1978

23
24 JUDGE OF THE SAN DIEGO SUPERIOR
25 COURT

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